

Amendment and Response

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Serial No.: 09/822,651

Confirmation No.: 9447

Filed: 30 March 2001

For: WEB HAVING DISCRETE STEM REGIONS

Remarks

The Office Action of 30 July 2003 has been received and reviewed. With no claims having been amended, added, or canceled, the pending claims remain claims 21-48 and 50-70. Reconsideration and withdrawal of the rejections are respectfully requested.

The 35 U.S.C. § 112, Second Paragraph, Rejection

Claim 61 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner alleged that the phrase "wherein the at least one discrete polymeric region comprises a plurality of discrete polymeric regions on the first major side of the nonwoven web" renders the claim indefinite. Applicants traverse this assertion for at least the following reasons.

Claim 56 (from which claim 61 depends) recites "a nonwoven web with at least one discrete polymeric region." Claim 61 further describes the "at least one discrete polymeric region" as being "a plurality of discrete polymeric regions." Moreover, it describes the location of the polymeric regions as being "on the first major side of the nonwoven web."

Applicants submit that claim 61 is not indefinite as it merely narrows and/or further defines the scope of one or more elements (e.g., the at least one discrete polymeric region) of its base claim. If the Examiner maintains this rejection, Applicants respectfully request that suggested language be include with the next Official Communication. Otherwise, reconsideration and withdrawal of the rejection are requested.

Applicants further request that the Examiner reconsider all pending claims based on the actual and definite language of the claims rather than on the Examiner's interpretation identified in paragraph 4 of the Office Action. This interpretation is clearly directed to different subject matter than that recited in claim 61.

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The 35 U.S.C. § 102 Rejections**Claims 21-31, 33-35, 37, 39, 40, 42-48, 50-53, and 55**

Claims 21-31, 33-35, 37, 39, 40, 42-48, 50-53, and 55 were rejected under 35 U.S.C. § 102(b) as being anticipated by Thomas (U.S. Patent No. 5,586,371). Applicants respectfully traverse that rejection for reasons presented previously, which are incorporated herein by reference in their entirety, and for the additional reasons presented below.

Applicants submit that claims 21-31, 33-35, 37, 39-40, 42-53 and 55 are not anticipated by Thomas because Thomas does not teach each and every element of the rejected claims. For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference. See M.P.E.P. § 2131.

Each of the independent claims of the present invention (i.e., claims 21, 40, and 48) recites a plurality of discrete polymeric regions fused to a first major side of the web. A plurality of stems extends from each discrete polymeric region of the plurality of polymeric regions.

In contrast to claims 21, 40, and 48, The Office Actions have identified, within the disclosure of Thomas, an array of loops 22 attached to a substrate 24. Each individual loop is attached to the substrate 24 by a base 26. In other words, the identified portions of Thomas show that each "discrete polymeric region" provides only a single loop.

Nonetheless, the Office Action asserts that a row of components in Thomas equates to a "discrete polymeric portion." Even if, for the sake of argument, one were to consider a row of adjacent loop components the equivalent of the claimed discrete polymeric regions, the loop components form only loops, not stems. That is, each loop is "severed from the distal end 30" (see Figure 1) where it then engages the adjacent loop while molten and forms the "solid loop structure 22" identified in the Office Action (see col. 5, line 59 - col. 6, line 8). Thus, there are no "stems" at all in the loop structure 22.

Moreover, although not asserted specifically by the Office Action, Applicants further submit that the hook structures 44 also fail to anticipate claims 21, 40, 48, and claims dependent therefrom. For example, Figures 1 and 2 clearly shown a demarcation line between each base of

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adjacent hook structures 44. If the structures 44 were to form a singular structure as would be required to support anticipation, the bases would flow together and no line delineating the individual bases between adjacent structures 44 would be visible.

Further, Applicants reiterate the traversal of the assertion that Thomas teaches polymeric regions that are "fused" to a substrate to a degree that supports an anticipation rejection. Thomas does not explicitly teach that the polymeric materials are "fused" to the substrate, but rather teaches only that the bases of the loops or hooks are "deposited" on the substrate. As such, the assertion is based on inherency, i.e., that Thomas inherently teaches fused polymeric regions. The standard for inherency with respect to anticipation, however, requires that the asserted result (i.e., fused polymeric regions) must necessarily result from the process disclosed in Thomas. Applicants respectfully submit that the burden of establishing inherency has not been met in the present rejection.

Claims 22-31, 33-35, 37, 39, 42-47, 50-53, and 55, which depend from one of independent claims 21, 40, and 48, are not anticipated by Thomas for the same reasons as presented above for claims 21, 40, and 48. In addition, such dependent claims each recite additional elements that further support patentability when combined with their respective independent claims.

For at least the above reasons, Applicants submit that claims 21-31, 33-35, 37, 39-40, 42-48, 50-53, and 55 are not anticipated by Thomas. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55

Claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wessels et al. (U.S. Patent No. 5,669,120). Applicants traverse this rejection for at least the following reasons.

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Applicants submit that claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55 are not anticipated by Wessels et al. because Wessels et al. does not teach each and every element of the rejected claims.

Once again, each of the independent claims of the present invention (i.e., claims 21, 40, and 48) recites a plurality of discrete polymeric regions fused to a first major side of the web. A plurality of stems extends from each discrete polymeric region of the plurality of polymeric regions. Figure 1 of Applicants' specification clearly illustrates the claimed configuration.

In contrast to claims 21, 40, and 48, Wessels et al. discloses a molded surface fastener wherein a synthetic resin (that forms hook elements) *encapsulates* the substrate (see, e.g., Figure 4A-4F). In fact, Wessels et al. makes clear that the woven or knit cloth to be used "must have adequate pores for the passage of molten resin." (Col. 3, lines 36-37). Thus, when manufactured, the molten resin passes through the pores of the woven or knit cloth "to embed the foundation structure of the pile woven or knit cloth in the molten resin." (Col. 4, lines 14-20, emphasis added).

Thus, the resin that forms the hooks in Wessels et al. does so by encapsulating, i.e., flowing through, its base substrate rather than fusing to a first major side as recited by the claims. As a result, Wessels et al. cannot anticipate claims 21, 40, and 48.

Claims 22-26, 28-31, 33, 39, 42-47, 50-53, and 55, which depend from one of independent claims 21, 40, and 48, are not anticipated by Wessels et al. for the same reasons as presented above for claims 21, 40, and 48. In addition, such dependent claims each recite additional elements that further support patentability when combined with their respective independent claims.

For at least the above reasons, Applicants submit that claims 21-26, 28-31, 33, 39, 40, 42-48, 50-53, and 55 are not anticipated by Wessels et al. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

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Claims 21, 23, 27, 30, 31, 38-40, and 44

Claims 21, 23, 27, 30, 31, 38-40, and 44 were rejected under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over, Cejka et al. (U.S. Patent No. 6,106,922). Applicants traverse this rejection for at least the following reasons. Moreover, Applicants reserve the right to swear behind this reference at a later date.

Applicants submit that claims 21, 23, 27, 30, 31, 38-40, and 44 are not anticipated by Cejka et al. because Cejka et al. does not teach each and every element of the rejected claims.

For example, as admitted by the Office Action at page 5, Cejka et al. does not "expressly show that the plurality of stems is formed on the discontinuous portions so that a plurality of stems extend from each of the discrete polymeric regions." (Office Action, page 5). As anticipation requires that each and every element of each rejected claim be found in the cited reference, Cejka et al. cannot, therefore, anticipate independent claims 21 and 40 nor the claims that depend therefrom.

However, the Office Action also asserts that, in the alternative, claims 21, 23, 27, 30, 31, 38-40, and 44 are rejected under 35 U.S.C. § 103(a) as being obvious over Cejka et al. as "it would have been obvious to one of ordinary skill in the art . . . to have constructed a web so that a plurality of stems extend from each of the discrete polymeric regions since Cejka et al. teaches that stems may be formed on any side of the web." (Office Action, page 5). Although Applicants do not agree with the substance of the rejection, it is rendered moot by the remarks presented below. Moreover, Applicants reserve the right to substantively traverse any rejection made in connection with Cejka et al. at a later date.

The present application is a Continuation Application of U.S. Patent Application Serial No. 09/257,447 (filed 25 February 1999). As a result, the present application is entitled to the benefit of the 25 February 1999 filing date of the '447 application.

Cejka et al. was filed 3 October 1997 and issued 22 August 2000. Applicants therefore respectfully submit that Cejka et al. qualifies as 35 U.S.C. § 103 prior art only under subsection (e) of 35 U.S.C. § 102.

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Applicants respectfully submit that Cejka et al., is not prior art for purposes of establishing obviousness in view of the amendments to 35 U.S.C. § 103(c) effective November 29, 1999. 35 U.S.C. § 103(c) provides that "subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

It is submitted that, at the time the invention of the instant application was made, the claimed invention and Cejka et al. were owned by (or subject to an obligation of assignment to) the same entity (see M.P.E.P. § 706.02(1)(2)).

Accordingly, Applicants submit that the rejection under 35 U.S.C. § 103(a) is rendered moot because Cejka et al. is not prior art for obviousness purposes in view of 35 U.S.C. § 103(c). More specifically, because Cejka et al. qualifies as prior art only under subsection (e) of 35 U.S.C. § 102, it may be excluded as prior art for obviousness purposes for the reasons set forth above.

Obviousness rejections based on Cejka et al. are therefore improper. Reconsideration and withdrawal of the rejection are respectfully requested.

The 35 U.S.C. § 103 Rejections

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

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Claims 32, 41, and 54

Claims 32, 41, and 54 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Thomas in view of Murasaki (U.S. Patent No. 5,643,651). Applicants traverse this rejection and submit that claims 32, 41, and 54 are not *prima facie* obvious for at least the following reasons.

Applicants submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited combination of documents. As stated above in regard to the 35 U.S.C. § 102(b) rejection of claims 21, 40, and 48 (from which claims 32, 41, and 54 depend), Thomas does not teach every element of claims 21, 40, and 48 (e.g., a plurality of stems extending from each discrete polymeric region, polymeric regions fused to a first major side of the web, and fusing of the polymeric material to the web). There is nothing identified in Murasaki that remedies these deficiencies.

Further, this rejection does not identify how one of ordinary skill in the art would modify the teachings of Thomas with those of Murasaki to reach the claimed invention. The Office Action equates the loops of Thomas with stems and then combines the actual hook or stem fasteners of Murasaki to reach the claimed invention. First, Applicants disagree that the loops of Thomas are equivalent to "stems" as recited in the present invention. Second, Applicants disagree with the assertion that one of ordinary skill in the art would consider modifying the loops of Thomas to obtain "loops" oriented in different directions as asserted in the Office Action. No discussion is provided as to how one of ordinary skill in the art could accomplish this goal, or whether there would be any reasonable likelihood of success in obtaining loops oriented in different directions. As a result, Applicants respectfully submit that a proper *prima facie* case of obviousness has not been presented.

For at least these reasons, Applicants submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited references. Reconsideration and withdrawal of the rejections are, therefore, respectfully requested.

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Claim 36

Claim 36 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Thomas. Applicants traverse this rejection and submit that claim 36 is not *prima facie* obvious for at least the following reasons.

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claim 21 (from which claim 36 depends), Thomas does not teach, or even suggest, every element of claims 21 (e.g., a plurality of stems extending from each discrete polymeric region or polymeric regions fused to a first major side of the web, fusing of the polymeric material to the web).

Further, claim 36 recites additional elements that further support patentability when combined with claim 21.

For at least these reasons, Applicants submit that claim 36 is not *prima facie* obvious in view of Thomas. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

Claim 38

Claim 38 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Thomas in view of Shephard et al. (U.S. Patent No. 6,205,623). Applicants traverse this rejection and submit that claim 38 is not *prima facie* obvious because the combination of Thomas and Shepard et al. does not teach every element of claim 38.

Claim 38, which depends from claim 21, includes all of the elements of claim 21. As stated above with regard to the 35 U.S.C. § 102 rejection of claim 21, Thomas does not teach, or even suggest, each and every element of claim 21. The addition of Shepard et al. does nothing to cure the deficiencies of Thomas. For this reason alone, Applicants respectfully submit that a *prima facie* case of obviousness has not been established.

In addition, Applicants respectfully submit that even if, for the sake of argument, a mushroom fastener is equivalent to a hook for fastening purposes, a *prima facie* case of obviousness would require some reasonable expectation of success for the asserted modification.

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Given that the teachings of Thomas are entirely directed at the manufacture of hooks or loops by severing strands of polymer under tension such that the severed strands recoil to form loops, Applicants submit that a proper *prima facie* case of obviousness requires some discussion as to how one would modify the teachings of Thomas to provide mushroom shaped fasteners as recited in claim 38. There is no such discussion and, as a result, a *prima facie* case of obviousness has not been established.

For at least the above reasons, Applicants submit that claim 38 is not *prima facie* obvious in view of the cited references. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 29, 34-37, and 43

Claims 29, 34-37, and 43 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Cejka et al. Applicants traverse for the following reasons.

Cejka et al. is not prior art for obviousness purposes for the reasons already described herein above (see rejection of claims 21, 23, 27, 30, 31, 38-40, and 44 under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Cejka et al.). As a result, this rejection is rendered moot. Reconsideration and withdrawal of the rejection are requested.

Claims 32, 41, and 54

Claims 32, 41, and 54 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Wessels et al. in view of Murasaki (U.S. Patent No. 5,643,651). Applicants traverse and submit that claims 32, 41, and 54 are not *prima facie* obvious in view of the cited combination of documents.

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claims 21, 40, and 48 (from which claims 32, 41, and 54 respectively depend), Wessels et al. does not teach, or even suggest, each and every element of claims 21, 40, and 48 (e.g., polymeric regions fused to a first

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major side of the web). There is nothing identified in Murasaki that remedies this deficiency. Further, these dependent claims recite additional elements that further support patentability when combined with their respective base claims.

For at least these reasons, Applicants submit that claim 32, 41, and 54 are not *prima facie* obvious over Wessels et al. in view of Murasaki. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

Claims 34-37

Claims 34-37 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Wessels et al. Applicants traverse and submit that claims 32, 41, and 54 are not *prima facie* obvious in view of this document.

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claim 21 (from which claims 34-37 depend), Wessels et al. does not teach, or even suggest, each and every element of claims 21, 40, and 48 (e.g., polymeric regions fused to a first major side of the web). Moreover, Applicants submit that dependent claims 34-37 recite additional elements that further support patentability when combined with their respective base claim.

For at least these reasons, Applicants submit that claim 34-37 are not *prima facie* obvious over Wessels et al. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 40, 42-48, 50-53, 55, 56, and 58-70

Claims 40, 42-48, 50-53, 55, 56, and 58-70 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Wessels et al. in view of Allen et al. (U.S. Patent No. 5,547,531). Applicants traverse and submit that claims 40, 42-48, 50-53, 55, 56, and 58-70 are not *prima facie* obvious in view of the cited combination of documents.

As stated above with regard to the 35 U.S.C. § 102(b) rejection of claims 40 and 48 (from which claims 42-48, 50-53, and 55 depend), Wessels et al. does not teach, or even suggest, each and every element of claims 40 and 48 (e.g., polymeric regions fused to a first major side of the

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web). There is nothing identified in Allen et al. that remedies this deficiency. Rather, Allen et al. is relied upon only to teach a nonwoven web of fibrous material attached to an elastic backing.

Moreover, with respect to independent claim 56, from which claims 58-70 depend, Applicants submit that Wessels et al. in view of Allen et al. fails to teach or suggest each and every element of the claim. For example, claim 56, like claims 40 and 48, recites a mechanical fastener having a nonwoven web with at least one discrete polymeric region fused to a first major side of the nonwoven web. For the same reasons as claims 40 and 48, Wessels et al. in view of Allen et al. fails to teach this element. Moreover, claim 56 also recites that the polymer of the at least one discrete polymeric region is entangled with a fibrous surface of the nonwoven web. The Office Action has not identified such a teaching in either Wessels et al. or Allen et al.

It is further submitted that the Office Action has failed to identify any motivation to combine the teachings of Wessels et al. with those of Allen et al. For example, a stated objective of Wessels et al. is "to provide a high-quality surface fastener, on which molded hook elements and loop elements made of fibers are mixedly distributed." Col. 2, lines 55-57. Yet, there is no motivation identified, nor is there any explanation of how, to intermix male and female components on the elastic backing of Allen et al.

Applicants thus submit that claims 40, 48, and 56 are allowable over Wessels et al. in view of Allen et al. Moreover, dependent claims 42-47, 50-53, 55, and 58-70 recite additional elements that further support patentability when combined with their respective base claims.

For at least these reasons, Applicants submit that claims 40, 42-48, 50-53, 55, 56, and 58-70 are not *prima facie* obvious over Wessels et al. in view of Allen et al. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

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Allowable Subject Matter

Although not explicitly indicated in the Office Action Summary, Applicants understand claim 57 to be allowable (but objected to), i.e., none of the rejections address or identify claim 57. Nonetheless, Applicants defer presenting this claim in independent format until consideration of the arguments presented herein above are fully considered.

Summary

It is submitted that pending claims 21-48 and 50-70 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30th day of October, 2003, at 4:17 p.m. (Central Time).

By: Rachel Gayler-Gebhardt
Name: Rachel Gayler-Gebhardt